

12207

RECORDATION NO. .... Filed 1425

**HOWREY & SIMON**

1730 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006

(202) 783-0800

SEP 23 1980 10 AM  
INTERSTATE COMMERCE COMMISSION  
FEDERAL OPERATION BR.  
I.C.C.  
SEP 23 12 01 PM '80  
RECEIVEDMARK D. WEGENER  
(202) 383-7048

September 23, 1980

No. 207AC20

Date SEP 23 1980

Fee \$ 60.00

ICC Washington, D. C.

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a) and the rules and regulations thereunder, as amended, I enclose herewith on behalf of RAILEASE Inc, as lessee, for filing and recordation, the original and counterparts of the following document:

RAILEASE Inc Equipment Trust Agreement,  
1980 Series 2, dated as of September 2,  
1980, by and between The Connecticut  
Bank and Trust Company, as trustee-  
lessor, and RAILEASE Inc, as lessee.

The names and addresses of the parties to the transaction evidenced by the foregoing document are as follows:

1. Trustee-lessor:

The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06115

2. Lessee:

RAILEASE Inc  
777 106th Avenue, N.E.  
Bellevue, Washington 98004

Please file and record the RAILEASE Inc Equipment Trust Agreement, 1980 Series 2, under the names set forth above. In addition, please cross-index the RAILEASE Inc Equipment Trust Agreement, 1980 Series 2, with the following document which was filed on August 1, 1980, and assigned Recordation No. 12064:

David C. Eddy  
C. Buntley and

HOWREY & SIMON

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
September 22, 1980  
Page Two

Lease Assignment, Assumption and Supplement Agreement, dated as of July 15, 1980, among BRAE Corporation, as lessor-assignor, RAILEASE Inc, as assignee, and Ashley, Drew & Northern Railway Company, as lessee.

The equipment covered by the aforementioned document consists of the following:

140 Boxcars, 70-ton capacity, 52'6" in length, manufactured by PACCAR Inc, AAR mechanical designation XM; bearing identifying road numbers ADN 9760-9899, both inclusive.

A check payable to the Interstate Commerce Commission in the amount of \$60.00 is enclosed to cover the recordation fee and cross-indexing fee.

Please stamp the enclosed letter and all counterparts of the document with your official recordation stamp. Please retain one counterpart for your files and return the remaining counterparts to the bearer of this letter.

Very truly yours,



Mark D. Wegener  
as Agent for RAILEASE Inc

MDW/file

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/23/80

OFFICE OF THE SECRETARY

**Mark D. Wegener**  
**Howrey & Simon**  
**1730 Pennsylvania Avenue, N.W.**  
**Washington, D.C. 20006**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/23/80** at **10:10am**, and assigned re-recording number(s). **12207**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

12207  
RECORDATION NO. .... Filed 1225

EXHIBIT A to  
PURCHASE  
AGREEMENT

SEP 23 1980 - 10 10 AM

INTERSTATE COMMERCE COMMISSION

=====

RAILEASE Inc  
EQUIPMENT TRUST  
1980 Series 2

\_\_\_\_\_

EQUIPMENT TRUST AGREEMENT

Dated as of September 2, 1980

By and Between

The Connecticut Bank and Trust Company,

Trustee

and

RAILEASE Inc

=====

Filed with the Interstate Commerce Commission  
at 10110 on September 23, 1980 under  
Recordation No 12207

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EQUIPMENT TRUST AGREEMENT dated as of September 2, 1980, by and between The Connecticut Bank and Trust Company, a Connecticut banking corporation, as Trustee (the "Trustee"), and RAILEASE Inc, a Washington corporation (the "Company"), which is 90% owned by PACCAR Inc, a Delaware corporation ("PACCAR"), and 10% owned by BRAE Rail Venture Corporation, a California corporation and a subsidiary of BRAE Corporation, a Delaware corporation ("BRAE").

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, RAILEASE Inc Equipment Trust Certificates Due September 30, 1995 (1980 Series 2) (the "Trust Certificates"), are to be issued and sold in an aggregate principal amount of \$5,250,000, subject to an upward or downward adjustment of 6% in accordance with Section 2.01, and the net proceeds (excluding premium and accrued interest, if any) of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund, to be known as RAILEASE Inc EQUIPMENT TRUST, 1980 SERIES 2, such fund to be delivered by the Trustee from time to time in part to the Company to reimburse the Company for the Cost of the Trust Equipment, as provided herein; and

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[Form of Trust Certificate]

\$ \_\_\_\_\_

No. \_\_\_\_\_

RAILEASE Inc

14% Equipment Trust Certificate Due September 30, 1995  
(1980 Series 2)

The Connecticut Bank and Trust Company, Trustee

The Connecticut Bank and Trust Company, Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of September 2, 1980, by and between the Trustee and RAILEASE Inc, a Washington corporation, hereby certifies that

\_\_\_\_\_ or [registered assigns]\* is entitled to an interest of \_\_\_\_\_ Dollars in RAILEASE Inc EQUIPMENT TRUST, 1980 SERIES 2, payable September 30, 1995, upon surrender of this Trust Certificate to the Trustee at its Corporate Trust Office (as defined in the Agreement) in the City of Hartford, Connecticut, and to interest thereon, payable on March 31 and September 30 in each year (hereinafter called Interest Payment Dates), at the rate of 14% per annum from the Original Issue Date (as defined in the Agreement) or such later date to which interest has been paid, until the principal amount represented by this Trust Certificate shall have become due, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 15% per annum. The interest so payable on any Interest Payment Date will, subject to certain exceptions provided in the Agreement, be paid to [the person in whose name this Trust Certificate (or one or more Predecessor Certificates as defined in the Agreement) is registered]\*\* at the close of business on the March 15 or September 15, as the case may be, next preceding such Interest Payment Date and may, at the option of the Trustee, be paid by check mailed to

\* Bracketed language should read "or order" in the case of order Trust Certificates.

\*\* Bracketed language to be replaced by "the holder hereof" in the case of order Trust Certificates.

the [registered]\* address of such person. Payment of the principal of and interest on this Trust Certificate will be made in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Trust Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount of \$5,250,000, subject to an upward or downward adjustment of 6% as provided in the Agreement, and issued or to be issued under the Agreement, pursuant to which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and to the RAILEASE Agreement referred to therein (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the holder hereof, by accepting this Trust Certificate, assents.

As a sinking fund for the Trust Certificates, the Agreement provides for the payment by the Company to the Trustee, on or before September 30 in each year, commencing September 30, 1984, and continuing to and including September 30, 1994, of additional rental in an amount equal to 8.333% of the total aggregate principal amount of Trust Certificates outstanding on September 30, 1984, except as provided otherwise in the next two succeeding paragraphs. In addition, on September 30, 1990 and on each sinking fund payment date thereafter the Trust Certificates are also redeemable, as a whole or in part, at the option of the Company, at the following redemption prices (expressed in percentages of principal amount), together with, in each case, accrued and unpaid interest to the date fixed for redemption (provided, that no Trust Certificates may be optionally redeemed, as part of a refunding or anticipated refunding operation, by the application, directly or indirectly, to such prepayment of funds

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\* Bracketed language deleted in the case of order Trust Certificates.

borrowed by the Company or any Affiliate (as defined in the Agreement) either (i) having an effective interest cost of less than 14% per annum or (ii) an average life to maturity of less than 9.5 years):

If Redeemed on September 30      Optional Redemption Prices

|            |          |
|------------|----------|
| 1990 ..... | 105.000% |
| 1991 ..... | 104.000% |
| 1992 ..... | 103.000% |
| 1993 ..... | 102.000% |
| 1994 ..... | 101.000% |
| 1995 ..... | 100.000% |

Such additional payments shall be applied proportionately to reduce each remaining mandatory sinking fund payment.

As more fully provided in the Agreement, upon loss, condemnation, theft, destruction, or irreparable damage to any units of Equipment as defined in the Agreement the Company may at its option (a) substitute for such units similar units of comparable fair value, or (b) pay additional rental to redeem the proportion of the total number of Trust Certificates then outstanding represented by such units at 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption, provided that the aggregate principal amount of Trust Certificates so redeemed exceeds \$250,000. Such additional payments shall be applied proportionately against all remaining mandatory sinking fund payments.

As more fully provided in Section 4.02 of the RAILEASE Agreement, in the event that the circumstances therein specified shall have occurred, at the option of the individual holders of the Trust Certificates timely exercised, the Company will pay additional rental to redeem all of the Trust Certificates then outstanding held by such holders at 100% of the principal amount thereof, together with accrued and unpaid interest to the date of redemption.

As more fully provided in the Agreement, in the event that all of the Equipment shall have been accepted by the Trustee, payment shall have been made therefor and there shall remain on deposit with the Trustee a portion of the proceeds of the sale of Trust Certificates, the Trustee, upon

Request (as defined in the Agreement) shall apply all or any part of such remaining proceeds to the redemption of Trust Certificates at par, such redemption to be made pro rata to the aggregate amount of Trust Certificates outstanding, provided, that such redemption shall occur on or prior to March 31, 1981.

The Trust Certificates are issuable as registered Trust Certificates or as order Trust Certificates in denominations of at least \$150,000 and any multiple of \$1,000 greater than \$150,000. The several denominations of Trust Certificates are interchangeable upon presentation thereof for that purpose at the Corporate Trust Office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

This Trust Certificate is transferable by the [registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its Corporate Trust Office of this Trust Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee,]\* and thereupon a new Trust Certificate or Certificates in authorized denominations for the unpaid aggregate principal amount will be issued to the transferee in exchange herefor and, if less than the entire principal amount hereof is transferred, a Trust Certificate for the remaining aggregate principal amount will be issued to the transferor. The Trustee and the Company may deem and treat [the person in whose name this Trust Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary]\*\*

---

\* Bracketed language to be replaced in the case of order Trust Certificates by "holder hereof by endorsement and delivery".

\*\* Bracketed language to be replaced in the case of order Trust Certificates by "the original purchaser hereof as the owner hereof until such original purchaser gives written notice to the Trustee that this Trust Certificate has been transferred or until this Trust Certificate is presented to the Trustee at its Corporate Trust Office

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Trust Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Trust Certificate to be signed by one of its authorized officers, by his signature or a facsimile thereof, and the corporate seal of the Trustee or a facsimile thereof to be hereto affixed or hereon imprinted and to be attested by one of its authorized officers, by his signature or a facsimile thereof.

Dated:

THE CONNECTICUT BANK AND TRUST  
COMPANY, Trustee

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

[Form of Guaranty for Trust Certificates]

RAILEASE Inc, for itself and its successors and

\_\_\_\_\_  
and may treat any subsequent holder hereof as the owner hereof until such holder gives written notice to the Trustee that this Trust Certificate has been transferred or until this Trust Certificate is presented to the Trustee at its Corporate Trust Office."

assigns, for valuable consideration, hereby unconditionally guarantees to the [registered]\* holder of the within Certificate the due and punctual payment of the principal of (and premium, if any, on) said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal (and premium, if any) and interest, to the extent legally enforceable, at the rate of 15% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein. This guaranty shall be performable as soon as an Event of Default shall have occurred under the Equipment Trust Agreement referred to in the Certificate irrespective of whether amounts due have been declared due and payable. This guaranty shall continue in effect and be performable by RAILEASE Inc in the event that any payment or other act of the Trustee shall be recaptured or voided for any reason.

RAILEASE Inc

By \_\_\_\_\_  
President

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof at maturity, whether by declaration or otherwise, as hereinafter more particularly provided, with interest to said date of maturity, as hereinafter provided, payable semi-annually on March 31 and September 30 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

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\* Bracketed language deleted in the case of order Trust Certificates.



## ARTICLE ONE

### DEFINITIONS

SECTION 1.01. Definitions. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under direct or indirect common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Business Day shall mean a day which in Hartford, Connecticut (or, if the Corporate Trust Office is not located in Hartford, Connecticut, then in the place where such Office is located) or New York, New York is not a day on which banking institutions are authorized by law to close.

Company shall mean RAILEASE Inc, a Washington corporation.

Corporate Trust Office shall mean the office of the Trustee at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at One Constitution Plaza, Hartford, Connecticut.

Cost, when used with respect to Equipment, shall mean the invoice cost to the Company thereof including freight costs, delivery charges and taxes.

Deposited Cash shall mean the aggregate of (a) cash on deposit with or to the credit of the Trustee as provided in the first paragraph of Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.05, (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with or to the credit of the Trustee and (c) sums deposited with the

Trustee pursuant to Section 5.06, Section 5.08 and Section 5.09.

Engineer shall mean an individual who demonstrates his qualifications as an engineer to the satisfaction of the Trustee or a co-partnership or a corporation engaged in an engineering business, who or which may be employed by the Company or any subsidiary or Affiliate of the Company or the Manager.

Engineer's Certificate shall mean a certificate signed by an Engineer.

Equipment shall mean standard-gauge railroad equipment of the type specified in Schedule A hereto first put into use on or after July 1, 1980.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

The word holder, when used with respect to Trust Certificates, shall mean the person in whose name registered Trust Certificates are registered and the holder of order Trust Certificates and shall include the plural as well as the singular number.

Interest Payment Dates shall mean March 31 and September 30 in each year.

Investment Securities shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of the interest and principal, (b) commercial paper of any company incorporated and doing business under the laws of the United States of America or one of the States thereof rated in the highest category by Standard & Poor's Corporation or Moody's Investors Service, Inc or any similar or successor rating agency, (c) certificates of deposit of or time deposits in, or banker's acceptances of, banks or trust companies (including the Trustee) incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least \$200,000,000, provided that such capital and surplus requirement shall not apply to the Trustee, and (d) repurchase agreements with respect to the obligations set forth in clause (a), (b) or (c) hereof with a member firm of the New York Stock Exchange, Inc

which has total capital and subordinated liabilities of at least \$50,000,000 and a net capital of at least \$15,000,000 or with any bank or trust company organized under the laws of the United States or any state thereof and having capital, surplus and undivided profits of at least \$200,000,000, provided that such capital, surplus and undivided profit requirement shall not apply to the Trustee.

Manager shall mean BRAE or any wholly owned subsidiary of BRAE and any other reputable and experienced car manager designated by the Company.

Officer's Certificate shall mean a certificate signed by the Chairman of the Board or the President or any Vice President or any Assistant Vice President or the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and to the holders and who may be an employee of or of counsel to the Company or the Manager or any Affiliate of either thereof.

Original Issue Date of any particular Trust Certificate shall mean the earlier of (a) the date of such Trust Certificate or (b) the date of the first Predecessor Certificate issued to evidence all or a portion of the same interest in the trust created hereunder as that evidenced by such particular Trust Certificate; provided that, if Predecessor Certificates of such particular Trust Certificate have different Original Issue Dates, the portion of such particular Trust Certificate attributable to such Predecessor Certificates shall be deemed to have such different Original Issue Dates.

Predecessor Certificates of any particular Trust Certificate shall mean every previous Trust Certificate evidencing all or a portion of the same interest in the trust created hereunder as that evidenced by such particular Trust Certificate; and, for the purposes of this definition, any Trust Certificate executed and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Trust Certificate shall be deemed to evidence the same interest in the trust created hereunder as the lost, destroyed or stolen Trust Certificate.

Purchase Agreement shall mean the Agreement dated as of September 2, 1980 between the Company and the purchaser of

the Trust Certificates named therein.

RAILEASE Agreement shall mean the Agreement dated as of September 2, 1980 between the Company and the Trustee.

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than five Business Days prior to the date of delivery to the Trustee and signed on behalf of the Company by any officer listed in the definition of "Officer's Certificate".

Total Authorized Issue shall mean \$5,250,000, provided, that if the Cost of the Trust Equipment shall be in excess of \$6,562,500 then the Total Authorized Issue may be adjusted upward by the Company by an aggregate amount not to exceed \$315,000, and provided, further, that if the Cost of the Trust Equipment shall be less than \$6,562,500 then the Total Authorized Issue may be adjusted downward by the Company by an aggregate amount not to exceed \$315,000, it being understood that in no event shall the Total Authorized Issue exceed 80% of the Cost.

Trust Certificates shall mean RAILEASE Inc Equipment Trust Certificates (1980 Series 2) issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean The Connecticut Bank and Trust Company and, subject to the provisions of Article Eight, any successor as trustee hereunder.

Unprotected Unit shall mean a unit of Trust Equipment located in any jurisdiction outside of the United States with respect to which the Trustee has not received an Opinion of Counsel to the effect either (i) that all recordings, registrations or filings necessary or desirable in such jurisdiction to protect the rights of the Trustee under this Agreement in and to each unit of the Trust Equipment located in such jurisdiction against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company have been made or (ii) that no such recording, registration or filing is necessary or desirable in such jurisdiction to protect such rights of the Trustee against such purchasers, mortgagees or creditors.

The words herein, hereof, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

## ARTICLE TWO

### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. Issuance of Trust Certificates. Upon the sale of any of the Trust Certificates, an amount equal to the principal amount of the Trust Certificates so sold shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee.

Thereupon, after the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the Total Authorized Issue thereof except as provided in Sections 2.05, 2.06 and 3.02.

SECTION 2.02. Interests Represented by Trust Certificates; Maturity; Interest; Denominations. Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder.

Each of the Trust Certificates shall be dated the date of its issuance by the Trustee. The Trust Certificates shall be payable and bear interest as specified in the form thereof hereinbefore set forth and shall mature on the date therein specified.

Trust Certificates shall be in denominations of at least \$150,000 and any multiple of \$1,000 greater than \$150,000 and shall be numbered consecutively with appropriate letter prefixes.

The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of

public and private debts. Notwithstanding the provisions of the preceding sentence of this paragraph, (i) in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit of an agreement of the holder of such Trust Certificate (the financial condition and creditworthiness of such holder to be satisfactory to the Trustee) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, and (ii) in the case of payments of principal and interest on the Trust Certificates then to be paid in full, on the date each such payment is due, the Trustee will mail its check, or on request of the holder, the Trustee will wire by 12:30 P.M. New York time, funds immediately available on such date, to the account of such holder at such bank as it may designate by notice in writing to the Trustee, in the case of wire transfers, and in all other cases, to such holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such holder (and the Company agrees to make its rental payments at such times and in such funds as will enable the Trustee to comply herewith); provided, however, that the deposit of an agreement pursuant to this paragraph shall not be required of (i) any original purchaser under the Purchase Agreement of the Trust Certificates or an Affiliate thereof, whose rights as to method of payment shall be as set forth in the Purchase Agreement or (ii) of any other holder who is a recognized institutional investor holding at least \$250,000 in unpaid amount of the Trust Certificates or 10% of the then aggregate unpaid amount of all Trust Certificates, whichever is greater, and the Trustee shall without the deposit of such agreement make payments of principal and interest to such original purchasers of Trust Certificates or to any other such holder at the address of each supplied to the Trustee by the Company or by such holder.

SECTION 2.03. Forms of Trust Certificate and Guaranty. The Trust Certificates and the guaranty to be endorsed thereon by the Company as hereinafter in Section 7.01 provided shall be in substantially the forms hereinbefore set forth.

SECTION 2.04 Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its authorized officers. The Trustee's corporate seal or a

facsimile thereof shall be affixed or imprinted thereon and attested by the manual or facsimile signature of one of its authorized officers. In case any officer or signer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer or signer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be issued and delivered as though such person had not ceased to be or had then been such officer or signer of the Trustee.

SECTION 2.05. Characteristics of Trust Certificates. (a) The Trust Certificates shall either be registered, as to both principal and interest, in the name of the holder or shall be to order, as the purchaser thereof shall direct; shall, in the case of registered Trust Certificates, be entitled to registration of transfer upon presentation and surrender thereof for registration of transfer at the Corporate Trust Office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by a duly authorized attorney, in form satisfactory to the Trustee, and in the case of order Trust Certificates shall be transferable upon endorsement and delivery thereof.

(b) The several denominations of Trust Certificates bearing the same maturity shall be interchangeable in authorized denominations at the Corporate Trust Office.

(c) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the person in whose name a registered Trust Certificate is registered as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary. The parties hereto may deem and treat the original purchaser as the owner of any order Trust Certificate until such original purchaser gives written notice to the Trustee that such Trust Certificate has been transferred or until such Trust Certificate is presented to the Trustee at its Corporate Trust Office and may treat any subsequent holder of an order certificate as the owner of such order Trust Certificate until such holder gives written notice to the Trustee that such Trust Certificate has been transferred or until such Trust Certificate is presented to the Trustee at its Corporate Trust Office.

(d) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the registered Trust Certificates.

(e) For any registration of transfer or exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

(f) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange or substitution for, or upon the transfer of, the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in interest shall result from such exchange, substitution or transfer.

(g) The Trustee shall not be required (1) to issue, register the transfer of or exchange any Trust Certificate during a period beginning at the opening of business fifteen days before any selection of Trust Certificates to be redeemed and ending at the close of business on the day of the mailing of relevant notice of redemption, or (2) to register the transfer of or exchange any Trust Certificate called or being called for redemption in whole or in part.

SECTION 2.06. Replacement of Lost Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and (except if the applicant is an original purchaser under the Purchase Agreement or an Affiliate thereof



or is a recognized institutional investor holder having equity capital equal to at least 600% of the face amount of Trust Certificates held by such holder) also shall furnish such security or indemnity as may be required by the Trustee and the Company, and shall pay all expenses and charges of such substitution or exchange. If the holder of such Trust Certificate is an original purchaser under the Purchase Agreement or an Affiliate thereof or is a recognized institutional investor holder having equity capital equal to at least 600% of the face amount of Trust Certificates held by such holder, the written undertaking of such party delivered to the Trustee shall be sufficient security and indemnity unless, in the judgment of the Trustee, the financial position of such party has suffered a material adverse change. All Trust Certificates are held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

### ARTICLE THREE

#### REDEMPTION OF TRUST CERTIFICATES

SECTION 3.01. Right of Redemption and Redemption Price. (a) The Trust Certificates are subject to redemption in part through the application of the applicable portions of the rental payable to the Trustee as a sinking fund pursuant to the first sentence of Section 5.04(B)(4), on September 30, 1984, and on each September 30 thereafter, to and including September 30, 1994, at the redemption price of 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption.

(b) The Trust Certificates are also subject to redemption, at the option of the Company, as a whole or in part, through the application of the applicable portions of the rental payable to the Trustee pursuant to the second sentence of Section 5.04(B)(4), on September 30, 1990 and on September 30 of each succeeding year and at the redemption prices specified in the form of Trust Certificate hereinbefore set forth, together with accrued and unpaid interest to the date fixed for redemption.

(c) The Trust Certificates are also subject to redemption at the option of the Company through the application of the applicable portions of the rental payable to the Trustee pursuant to Section 5.04(B)(6) upon the happening of a Casualty Occurrence as set forth in Section 5.08 or in connection with Unprotected Units as to which the holders have declared an Optional Casualty under Section 5.09, in each case at the redemption price of 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption; provided that such right of redemption will only be available for repayments in excess of \$250,000.

(d) The Trust Certificates are also subject to redemption in the manner specified in Section 4.02 of the RAILEASE Agreement.

(e) In the event that all of the Equipment described in Schedule A hereto shall have been accepted by the Trustee pursuant to Sections 4.01 and 4.04(a), payment shall have been made therefor pursuant to Section 4.02 and there shall remain on deposit with the Trustee a portion of the proceeds of the sale of the Trust Certificates, the Trustee, upon Request, shall apply all or any part of such remaining proceeds to the redemption of Trust Certificates at the redemption price of 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption, such redemption to be made pro rata to the aggregate amount of Trust Certificates outstanding provided that such redemption shall occur on or prior to March 31, 1981.

(f) The Trust Certificates are also subject to redemption in part at the option of the Company through the application of the rental payable to the Trustee pursuant to Section 5.04(B)(9) upon the happening of the event specified in the final paragraph of Section 4.04 at the redemption price of 100% of the principal amount thereof, together with accrued and unpaid interest to the date fixed for redemption, provided that such redemption shall occur on or prior to March 31, 1981.

SECTION 3.02. Selection of Trust Certificates for Sinking Fund Redemption; Notice of Redemption. On or before August 31, 1984, and on or before August 31, in each year thereafter to and including August 31, 1994, the Trustee shall select for redemption a principal amount of Trust Certificates so as to exhaust the amount of rental to be paid by the

Company to it in cash pursuant to the first sentence of Section 5.04(B)(4) on the next succeeding September 30. The Trust Certificates (or portions thereof) to be redeemed shall be determined by the Trustee by allocating as nearly as may be to the nearest \$1,000 the principal amount of Trust Certificates to be redeemed among the various holders (if more than one) of Trust Certificates in proportion to the outstanding aggregate principal amount of Trust Certificates held by each such holder, provided that Trust Certificates may be redeemed in part only in multiples of \$1,000 and provided further, in the case of registered Trust Certificates that if such Trust Certificates are held by any holder in more than one account, each such account shall be deemed to be a separate holder for purposes of this Section 3.02.

The Trustee shall mail by certified mail, return receipt requested, postage prepaid, a notice of redemption at least 30 days prior to each sinking fund redemption date to the holders of the Trust Certificates so to be redeemed in whole or in part, at their last addresses as they shall have been notified to the Trustee. No redemption hereunder shall be effective with respect to any Trust Certificates unless the holder thereof shall have received notice as herein specified, but failure to give such notice with respect to any Trust Certificate, or any defect therein, shall not affect the validity of any proceedings for the redemption of any other Trust Certificates.

The notice of redemption shall also state the aggregate principal amount of Trust Certificates to be redeemed and the serial numbers thereof; and in case there shall have been selected as aforesaid less than the entire principal amount of any Trust Certificate, the notice shall specify the serial number of such Trust Certificate and the principal amount thereof called for redemption, and shall state that on and after the redemption date, upon surrender of such Trust Certificate (except as otherwise provided in the last paragraph of Section 2.02), the holder will receive the redemption price in respect of the principal amount thereof called for redemption and, without charge to the holder of such Trust Certificate, a new Trust Certificate for the principal amount thereof remaining unredeemed. The serial numbers of any Trust Certificates to be redeemed, required to be included in any such notice, may be stated in any one or more of the following ways: individually; in groups from one number to another number, both inclusive, except such as shall previously have been called for redemption or otherwise retired; or in such other manner

as the Trustee shall deem appropriate.

SECTION 3.03. Procedure for Optional Redemption of Trust Certificates. The procedure for the optional redemption of Trust Certificates shall be as follows:

(1) In case the Company shall desire to redeem Trust Certificates pursuant to Section 3.01(b), (c), (e), or (f), it shall deliver an Officer's Certificate to the Trustee giving notice of the exercise of such right of redemption and specifying the aggregate principal amount of Trust Certificates to be redeemed and the date fixed for redemption (which date shall be at least 30 days but no more than 60 days after delivery of such Officer's Certificate, provided that in the case of redemptions pursuant to Section 3.01(e) or (f), such redemptions shall occur on or prior to March 31, 1981.

(2) Notice of redemption shall be given and, if less than all the outstanding Trust Certificates are to be redeemed, selection of the particular Trust Certificates (or portions thereof, but only in multiples of \$1,000) to be redeemed shall be made, in like manner as specified in Section 3.02.

(3) If less than all of the outstanding Trust Certificates are redeemed pursuant to this Section, such optional repayments by the Company will be applied proportionately to reduce the remaining mandatory sinking fund payments and payment at maturity.

SECTION 3.04. Procedure for Redemption of Trust Certificates at Option of Holders. Upon the occurrence of any of the events specified in Section 4.02 of the RAILEASE Agreement if any holder of a Trust Certificate or Certificates desires that such Trust Certificate or Certificates be redeemed, such holder shall give timely written notice to the Trustee and the Company of the exercise of such right, specifying the aggregate principal amount of Trust Certificates to be redeemed and the date (which shall be at least 60 days after the giving of such notice) on which such repayment must be made. The Trustee also shall give the Company prompt notice of any such request for redemption.

SECTION 3.05. Payment of Trust Certificates Called for Redemption. The Company on or before the redemption date specified in the notice of redemption shall deposit with the Trustee an amount in cash as rental pursuant to Section 5.04 sufficient to redeem all the Trust Certificates or portions thereof called for redemption, and the Trust Certificates or portions thereof called for redemption shall become due and payable on such redemption date at the Corporate Trust Office. From and after such deposit and such redemption date interest on such Trust Certificates or portions thereof shall cease to accrue and such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefit of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee. The Trustee shall hold the redemption moneys in trust for the holders of the Trust Certificates or portions thereof called for redemption and shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates, subject to the provisions of the last paragraph of Section 2.02.

SECTION 3.06. Transfer of Title Upon Optional Redemption. Upon any redemption in whole or in part of the Trust Certificates pursuant to Section 3.01(b), Section 3.01(c) or Section 3.01(d), the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company in a Request, without recourse, representation or warranty all the right, title and interest of the Trustee in and to units of Trust Equipment in accordance with the next sentence of this Section 3.06 and the lease provided in Section 5.01 shall terminate with respect to such units. The number of units to be so assigned and transferred by the Trustee shall be in the same proportion to the total number of units of Trust Equipment immediately prior to such redemption as the principal amount of Trust Certificates redeemed in such redemption bears to the aggregate principal amount of Trust Certificates outstanding immediately prior to such redemption. The specific units of Trust Equipment to be so assigned and transferred shall be selected in any reasonable manner specified in the Request and reasonably calculated to assure that the overall quality of the units of Trust Equipment remaining after such transfer is not materially different from such quality prior to such transfer. The Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the transferee's title

to the units so assigned and transferred under the laws of any jurisdiction.

Section 3.07. Cancellation of Trust Certificates Upon Redemption. All Trust Certificates redeemed and paid in full under this Article Three shall be surrendered to the Trustee and cancelled by the Trustee, and no Trust Certificates shall be issued hereunder in place thereof.

#### ARTICLE FOUR

##### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. Acquisition of Equipment by Trustee. The Company shall, from time to time, cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto. Such Equipment shall be delivered to and accepted by the person or persons designated by the Company to the Trustee as its agent or agents to receive such delivery and acceptance (who may be one or more of the officers or agents of the Company or a Manager or an Affiliate of either thereof who has been so designated by the Company; in the absence of any designation by the Company, the Trustee shall be deemed to have designated the Manager) and the certificate of any such agent or agents as to such delivery and acceptance shall be conclusive evidence of such delivery and acceptance.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition to any of the Equipment specifically described in Schedule A hereto, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment, to be included under the trust, provided, however, that at least 60 days prior to the delivery of such Equipment of a type not specified in Schedule A hereto to the Trustee or its agent or agents the Company shall notify the holders of the Trust Certificates of such proposed addition or substitution of Equipment and, if within 30 days after receipt of such notice at least 66 2/3% of the holders of Trust Certificates then outstanding object to such addition or substitution, the Company shall not have the right to subject such additional

Equipment to the trust.

SECTION 4.02. Payment of Deposited Cash. From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall (subject to the provisions of Sections 4.03 and 4.04) pay, upon Request, to the manufacturers or owners (or the Company if it shall be the owner and so direct in the Request) of the delivered Trust Equipment out of Deposited Cash an amount not in excess of 80% of the aggregate Cost of such Trust Equipment, as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 4.04(b).

SECTION 4.03. Payment of Deficiency. The Company covenants that, with respect to any part of the Trust Equipment not owned by it, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A) and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners of the delivered Trust Equipment, by the use of such advance rental, the portion (if any) of the Cost of the delivered Trust Equipment which has not been either (i) paid out of Deposited Cash as provided in Section 4.02 or (ii) paid by delivery to the manufacturer or other owner of the delivered Trust Equipment of unsecured notes or other unsecured evidences of indebtedness or stock of the Company or cash; the intention being that the Company shall have paid or shall ultimately pay not less than 20% of the Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such Cost and the Company shall ultimately pay the remainder, to be not less than 20% of such Cost.

SECTION 4.04. Supporting Papers. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment, stating that the Trust Equipment described and specified therein by number or numbers has been delivered to and accepted by such agent or agents;

(b) an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use or, in the alternative, that such unit was not first put into use before July 1, 1980, (iv) whether such Trust Equipment is then subject to a lease and, if so, the name of each lessee, (v) that the representations and warranties of the Company contained in the Purchase Agreement are true and correct in all material respects on such date as if made on and as of the date of delivery of such certificate, (vi) that no Event of Default, and no event or condition which, with the giving of notice or passage of time or both would constitute an Event of Default, under this Agreement or the RAILEASE Agreement has occurred and is continuing on the date of delivery of such certificate, and (vii) that, in the opinion of the signer, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with;

(c) a certificate of the Manager which shall state that the Cost (other than freight, delivery charges and related taxes) of such Trust Equipment is not greater than fair market value in the opinion of the signer as of the date of the Request with respect thereto given pursuant to Section 4.02;

(d) a bill or bills of sale covering such unit of Trust Equipment from the manufacturers or owners (including the Company if it shall be the owner) thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein) other than subleases permitted by Section 5.10, other than liens permitted by Section 7.03 and other than the rights of the Company hereunder;

(e) an Opinion of Counsel to the effect that such bill or bills of sale are valid and effective, upon consummation of the filings referred to in (f) below, either alone or in connection with any other



instrument referred to in and/or accompanying such opinion, to vest in the Trustee a valid first and prior perfected security interest in and to such Trust Equipment free from all liens and encumbrances (including any leasehold interest therein) other than subleases permitted by Section 5.10, other than liens permitted by Section 7.03 and other than the rights of the Company hereunder;

(f) an opinion of Howrey & Simon, special ICC counsel, to the effect (i) that in the case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company and has been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 11303 of the Interstate Commerce Act (49 U.S.C. §11303) and (ii) that a search of ICC filings has been made and that no prior perfected unperfected security interest has attached to such Trust Equipment during the period from July 1, 1980 to the date of such opinion; and

(g) an Officer's Certificate of PACCAR which shall state that the representations and warranties contained in the Officer's Certificate delivered pursuant to Section 5(a) of the Purchase Agreement are true and correct in all material respects on such date as if made on and as of such date.

Any Officer's Certificate delivered pursuant to Section 4.04(b) ("preliminary Officer's Certificate") may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee. The Trustee shall pay out of Deposited Cash against delivery of such preliminary Officer's Certificate 80% of such tentatively determined Cost.

If the amount equal to 80% of the Cost of the Trust Equipment referred to in such final Officer's Certificate is greater than the amount of Deposited Cash paid by the Trustee pursuant to Section 4.02 with respect to such Trust Equipment (such difference is called in this paragraph the "Deficit Cost Difference") then the Trustee shall pay, upon receipt of such final Officer's Certificate and a Request, to the manufacturers or owners (or the Company if it shall be the owner and so

direct in the Request) of the delivered Trust Equipment out of Deposited Cash an amount not in excess of the Deficit Cost Difference.

If the amount equal to 80% of the Cost of the Trust Equipment referred to in such final Officer's Certificate is less than the amount of Deposited Cash paid by the Trustee pursuant to Section 4.02 with respect to such Trust Equipment (such difference is called in this paragraph the "Excess Cost Difference") then the Company shall at its option (a) cause to be sold, assigned and transferred to the Trustee in accordance with Section 4.01 additional units of Equipment and the Excess Cost Difference shall be reduced by an amount equal to 80% of the Cost of each such additional unit of Equipment or (b) pay to the Trustee rent as provided in Section 5.04(B)(9) in an amount equal to the Excess Cost Difference (reduced as provided in clause (a) of this paragraph) and redeem Trust Certificates in accordance with Section 3.01(f).

## ARTICLE FIVE

### LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company, from the date of delivery to the scheduled maturity of the Trust Certificates, all of the Trust Equipment.

SECTION 5.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents, the same shall, ipso facto and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. Substituted Equipment Subject Hereto. In the event that the Company shall, as provided in Section 4.01, 4.04, 5.06 or 5.08, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto (which supplement the Trustee shall execute upon Request) and upon delivery to the Trustee shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 5.04. Rental Payments. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinbefore provided, as advance rental hereunder at the time of any payment pursuant to Section 4.02, a sum equal to the portion (if any) of the Cost of the delivered Trust Equipment which has not been either (i) paid out of Deposited Cash as provided in Section 4.02 or (ii) paid by delivery to the manufacturer or other vendor of the delivered Trust Equipment of unsecured notes or other unsecured evidences of indebtedness or stock of the Company or cash.

(B) In addition to such advance rental the Company shall pay to the Trustee, as hereinafter provided, as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) from time to time upon demand of the Trustee (a) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investment Securities;

(2) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the

income or property of the trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;

(3) (a) on or before each Interest Payment Date the amounts of the interest payable on the Trust Certificates on such Interest Payment Date and (b) interest at the rate per annum set forth in the Trust Certificates from the due date, upon the amount of any installments of rental payable under this subparagraph (3) and the following subparagraphs (4), (5), (6), (7) and (9) which shall not be paid when due, to the extent legally enforceable;

(4) as a sinking fund for the Trust Certificates, on or before September 30 in each year, commencing September 30, 1984 and continuing to and including September 30, 1994, an amount in cash equal to 8.333% of the total aggregate principal amount of Trust Certificates outstanding on September 30, 1984, adjusted as provided in Section 3.03(3). In addition on or before September 30, 1990 and each sinking fund payment date thereafter, the Company may pay additional rentals to redeem any Trust Certificates to be redeemed pursuant to Section 3.01(b);

(5) the principal of the Trust Certificates (other than those called for redemption pursuant to Section 3.01) upon the maturity thereof, whether by declaration or otherwise;

(6) on or before the redemption date specified in a Request delivered pursuant to Section 3.03 in connection with redemptions pursuant to Section 3.01(c), an amount in cash sufficient to redeem the proportion of the total number of Trust Certificates then outstanding represented by the units suffering a Casualty Occurrence or by the Unprotected Units as to which the holders have declared an Optional Casualty Occurrence and as to which the Company has elected to redeem Trust Certificates pursuant to Section 3.01(c);

(7) upon the occurrence of any of the events referred to in Section 4.02 of the RAILEASE Agreement and if any holder of Trust Certificates timely exercises its option to require redemption of Trust Certificates, on or before the redemption date specified in a notice given pursuant to Section 3.04, an amount in cash sufficient to redeem such amount of Trust Certificates;

(8) from time to time upon demand of the Trustee at the request of any holder any and all taxes, assessments and governmental charges which may be imposed upon any holder as a result of such holder being deemed to own, constructively or otherwise, any of the Trust Equipment; and

(9) on or before any redemption date specified in a Request (but not later than March 31, 1981) in connection with a redemption pursuant to the last paragraph of Section 4.04, an amount in cash sufficient to redeem Trust Certificates so to be redeemed pursuant to Section 3.01(f).

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authority thereof, to be paid on behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect, and provided, further, that adequate book reserves have been established with respect thereto to the extent required by generally accepted accounting principles.

The Trustee will pay or discharge any and all taxes, claims, liens or charges claimed by any party by, through or under the Trustee or its successors or assigns, and not arising out of the transactions contemplated hereby or in the other documents mentioned herein which, if unpaid, might become a lien, charge or encumbrance on or with respect to the Trust Equipment and the payments to be made hereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner, provided that such contest will not materially endanger the rights or interests of the Company or of the holders of the Trust Certificates.

SECTION 5.05. Termination of Lease. At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for payment in full of all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust Equipment shall vest in the Company or its nominee or another transferee designated by it in a Request and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's or such nominee's or transferee's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that, except as otherwise provided in Section 3.06 or 5.06 or 5.08, until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 5.06. Substitution and Replacement of Equipment. Upon Request, the Trustee shall, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to any or all of the Trust Equipment; provided, however, that none of the Trust Equipment shall be so assigned or transferred (except as provided in Sections 3.06, 5.05 and in the fourth

sentence of the first paragraph of Section 5.08) unless simultaneously (a) there shall be conveyed to the Trustee other Equipment of a fair value not less than the fair value, as of the date of such Request, of the Trust Equipment so assigned or transferred by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value, as of said date, of the Trust Equipment so assigned or transferred by the Trustee.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

(1) a Manager's Certificate stating (i) the fair value as defined below in this Section 5.06, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee, (ii) that such assignment or transfer will not impair the security under this Agreement in contravention of the provisions hereof and (iii) the fair value (as so defined) of such substituted units of Equipment as of such date;

(2) an Officer's Certificate stating (i) the date each unit of Trust Equipment so to be assigned or transferred by the Trustee was first put into use (or that such unit was first put into use not earlier than a specified date), (ii) the original Cost of each unit of the Equipment so to be substituted and the date it was first put into use (or that such unit was first put into use not earlier than a specified date), and that such substituted units of Equipment have an expected useful life extending beyond the fixed date on which all Trust Certificates shall mature, (iii) that each unit of Equipment so to be substituted has been marked as provided in Section 5.07, (iv) that each such unit so to be substituted is Equipment as herein defined or has otherwise been approved by the holders of Trust Certificates in the manner provided in the second paragraph of Section 4.01, (v) in cases where the original cost of the units to be assigned or transferred exceeds \$300,000, that the representations and warranties of the Company contained in the Purchase Agreement are true and correct in all

material respects on such date as if made on and as of the date of such certificate, (vi) that no Event of Default, and no event or condition which, with the giving of notice or passage of time or both would constitute an Event of Default under this Agreement or in any other written undertaking of the Company to the Trustee has occurred and is continuing and (vii) that, in the opinion of the signer, all conditions precedent provided for in this Agreement, relating to such substitution, have been complied with;

(3) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (d) of the first paragraph of Section 4.04;

(4) an Opinion of Counsel to the effect that such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and/or accompanying such opinion, to vest in the Trustee a valid first and prior perfected security interest in and to such substituted Equipment after giving effect to filing referred to in (5) below free from all liens and encumbrances (including any leasehold interest therein) other than subleases permitted by Section 5.10 hereof, other than liens permitted by Section 7.03, and other than the rights of the Company hereunder;

(5) an opinion of ICC counsel for the Company, to the effect (i) that a proper supplement hereto in respect of such substituted Equipment has been duly executed by the Trustee and the Company and has been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 11303 of the Interstate Commerce Act (49 U.S.C. § 11303) and, (ii) if such substituted Equipment was not new when delivered by the manufacturer thereof to the Trustee, that a search of ICC filings has been made and that no prior unperfected security interest has attached to such substituted Equipment; and

(6) if PACCAR's obligations under Section 2 of the Cash Flow Support Agreement (as defined in the RAILEASE Agreement) have not been terminated, an



Officer's Certificate of PACCAR which shall state that the representations and warranties contained in the Officer's Certificate delivered pursuant to Section 5(a) of the Purchase Agreement are true and correct in all material respects on such date as if made on and as of such date.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 5.06 in so far as they relate to the action requested.

Cash deposited with the Trustee pursuant to this Section 5.06 or pursuant to Section 5.08 shall be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a fair value, as of the date of said Request, not less than the amount of cash so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.06 insofar as they relate to the action requested.

For all purposes of this Section 5.06 fair value shall be determined as follows (and the manner of such determination shall be set forth in an Officer's Certificate (unless at the time there is a Manager, in which case in a certificate of an executive officer of the Manager) furnished in respect thereof, including a statement of actual fair value, as the case may be): the fair value of any unit of Equipment shall be deemed to be (A), if new, i.e., no older than six months, its Cost and, if not new, the lesser of (i) the depreciated book value thereof on the books of the owner thereof, as of the date of the transfer thereof to or by the Trustee, as the case may be, or (ii) fair market value, as determined by an Engineer, with the concurrence of an executive officer of the Company in cases where more than \$100,000 in original Cost of units are being valued or (iii) the value thereof, as of the date of transfer to or by the Trustee, as the case may be, as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, Adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question (or, if there is no such Code then in effect, sound accounting principles), whichever shall be less.

SECTION 5.07. Marking of Trust Equipment. The Company agrees that if the Opinion of Counsel specified in Section 5.08 hereof shall not be delivered to the Trustee as provided in said Section 5.08 or if, in the opinion of the Trustee or the holder of any Trust Certificate, marking of one or more units of Trust Equipment is required by law properly to protect the title of the Trustee to the Trust Equipment or the rights of the holders of Trust Certificates, the Company will, as soon as practicable after determining that such marking is required or after the failure of the Company to deliver the aforementioned Opinion of Counsel, arrange for the marking of each such unit of Trust Equipment in the following manner. There shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than seven-sixteenths of one inch in height:

TITLE TO THIS CAR IS VESTED IN A TRUSTEE UNDER AN  
EQUIPMENT TRUST AGREEMENT RECORDED UNDER 49 U.S.C.  
§ 11303.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each such unit of the Trust Equipment.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith upon learning thereof cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a supplement setting forth new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be executed and acknowledged by the Company and (if necessary for recording and filing) by the Trustee (who shall execute and acknowledge on Request) and which shall be filed and recorded in like manner as this Agreement.

Any unit of Trust Equipment required to be marked pursuant to this Section 5.07 may be lettered, "RAILEASE Inc", and/or "Managed By [insert name of Manager]" or in some other appropriate manner for convenience of identification of the

leasehold interest of the Company therein, and may also be lettered, in case of a sublease of any Trust Equipment, in such manner as may be appropriate for convenience of identification of the subleased interest therein; but except as provided in the preceding paragraph, the Company, from and after the date hereof and during the continuance of the lease provided for herein, will not allow the name of any person, firm, association or corporation to be placed on or to remain on any unit of Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, firm, association or corporation other than the Trustee.

SECTION 5.08. Maintenance of Trust Equipment;  
Casualty Occurrence. The Company agrees that it will at all times maintain and keep or cause others to maintain and keep each unit of Trust Equipment in good order and proper repair and condition to be readily acceptable for regular use on Class I line-haul United States railroads without cost or expense to the Trustee, unless and until it becomes (a) economically obsolete (as evidenced by a resolution of the Board of Directors of the Company), (b) irreparably destroyed, (c) worn out, (d) stolen, (e) lost, (f) suffers significant damage and is not repaired and restored to service within 90 days or (g) is taken or requisitioned by condemnation or otherwise by the United States Government, or by any other government or governmental entity resulting in loss of possession by the Company for a period of 90 consecutive days (any such occurrence listed in (a) through (g) being hereinafter called a Casualty Occurrence). Whenever any unit of Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 30 days after learning of such Casualty Occurrence, deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the fair value thereof as of the date of such Casualty Occurrence. Within 30 days after learning of any Casualty Occurrences to units of Trust Equipment (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section) the aggregate fair value of which, as of a time immediately prior to the dates of the respective Casualty Occurrences specified in the Officer's Certificates related thereto delivered pursuant to the foregoing sentence, shall exceed \$500,000 (or such lesser amount as the Company may elect), the Company shall deposit with the Trustee an amount in cash equal to such fair value, provided, however, that the Company shall have the option, in lieu of making all or any part of such cash payment, (i) to convey to

the Trustee, in the manner and subject to the conditions set forth in Section 5.06 hereof, Equipment of a fair value equal to the amount of all or any part of the cash payment which would otherwise be required, or (ii) to redeem Trust Certificates in a minimum amount of \$250,000. Upon such deposit, conveyance or redemption by the Company, the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company without recourse, representation or warranty in a Request all the right, title and interest of the Trustee in and to the units which have suffered a Casualty Occurrence, the lease provided in Section 5.01 shall terminate with respect to such units and the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the transferee's title to such units under the laws of any jurisdiction; provided, however, that if any Casualty Occurrence giving rise to a deposit of cash by the Company with the Trustee is the result of an Optional Casualty Occurrence (as defined in Section 5.09), the Company may at its option direct the Trustee by Request to, and the Trustee shall, retain title to the units having suffered such Optional Casualty Occurrence and release to the Company the cash related to such units when and if they cease to be Unprotected Units. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any such Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 5.08 shall be held and applied as provided in the fourth paragraph of Section 5.06. For all purposes of this paragraph, fair value shall be determined in the manner provided in Section 5.06.

The Company covenants and agrees to furnish to the Trustee and to the holders of the Trust Certificates at least once, on or before April 1 in every calendar year following the calendar year in which occurs the first delivery of any of the Trust Equipment to the Trustee or its agent or agents hereunder and during the continuance of the lease provided for herein, (a) an Officer's Certificate, stating as of the preceding December 31, (1) the number of units of the Trust Equipment then covered hereby and then under sublease, together with a list of such sublessees and the units of Trust Equipment leased by each of them, (2) the amount, description and numbers of all Trust Equipment as to which the Company has been advised has suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement

in the case of the first statement), (3) the number of units of the Trust Equipment which the Company has been notified are then undergoing repairs, other than running repairs, or are then withdrawn from use for such repairs and (4) that in the case of all Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the plates or marks required by Section 5.07, if any, have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby and, if the Company does not intend to mark the units of Trust Equipment as provided in Section 5.07, (b) an Opinion of Counsel to the effect that the marking of one or more units of Trust Equipment as provided in Section 5.07 is not required by law properly to protect the title of the Trustee to the Trust Equipment or the rights of the holders of Trust Certificates and as to such other matters as the Trustee or the holders of the Trust Certificates may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof. The Company shall have no liability to the Trustee for any injury suffered by its agent during such inspection not caused by the Company's negligence.

SECTION 5.09. Optional Casualty Occurrence. If more than 10% of the units of Trust Equipment shall be Unprotected Units at any one time, an Optional Casualty Occurrence shall be deemed to have occurred with respect to those number of Unprotected Units as are sufficient to reduce the number of Unprotected Units to 10% or less of the total units of Trust Equipment. Within 30 days after the occurrence of such Optional Casualty Occurrence known to the Company, the Company shall give notice to the Trustee and the holders of the Trust Certificates, describing such Trust Equipment and specifying the fair value thereof as of the date of such Optional Casualty Occurrence. Within 30 days after receipt of such notice, the holders of 66 2/3% of the aggregate principal amount of the then outstanding Trust Certificates, by written notice to the Trustee and the Company may, at their option, declare such Optional Casualty Occurrence to constitute a Casualty Occurrence within the meaning of Section 5.08 hereof.

SECTION 5.10. Possession of Trust Equipment. Except as provided in this Section 5.10 and as required by applicable mandatory provisions of law, the Company will not assign or transfer its rights hereunder, or transfer or sublet

the Trust Equipment or any part thereof or assign, pledge, mortgage, transfer or otherwise dispose of any rights under any sublease of any of the Trust Equipment, without the written consent of the Trustee and the holders of at least 66 2/3% of the then outstanding Trust Certificates first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a corporation which shall acquire all or substantially all of the property of the Company in accordance with the RAILEASE Agreement and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates shall not be deemed a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization for the Company or for all or substantially all of its property shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

So long as no Event of Default shall have occurred and be continuing and subject to the provisions hereof regarding Unprotected Units, the Company and any of its Affiliates shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company may also (a) furnish the Trust Equipment or any part thereof to railroad companies for use in the United States, Canada and Mexico upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other lines of railroad in the usual interchange traffic, or to other railroad companies for use in the United States, Canada and Mexico in their business, or (b) sublet all or any part of the Trust Equipment to sublessees incorporated in the United States or having their principal places of business in the United States for use in the United States, Canada and Mexico, but only, in either case, upon and subject to all the

terms and conditions of this Agreement, and to all rights of the Trustee hereunder.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession and use of the Trust Equipment covered thereby, and, subject to the provisions of Section 5.07, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such sublessee therein; provided, however, that every such sublease shall expressly subject and make subordinated the right of the sublessee to the rights of the Trustee under this Agreement.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 5.11. General Indemnity; Compliance With Laws. The Company covenants and agrees to indemnify, defend and hold harmless the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly, but not by way of limitation, against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by

reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of principal and interest on the Trust Certificates and the conveyance of the Trust Equipment, as provided in Section 5.05 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all of the Trust Equipment.

SECTION 5.12. Insurance. The Company will, at all times during the term of this Agreement, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Trust Equipment, against such risks, in such amounts and on such terms and conditions as are equivalent in amounts and against risks customarily insured against by the Company in respect of similar equipment owned by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for keeping the Equipment in interchange service on Class I line-haul railroads. All policies with respect to such insurance shall name the Trustee as a loss payee or additional insured, as appropriate, shall provide for at least 30 days' prior written notice by the insurance carrier to the Trustee in the event of cancellation, expiration or amendment (and the Company shall provide 30 days' prior written notice to the Trustee in any such event), shall either include waivers by the insurer of all claims for premiums against the Trustee and the holders or impose no such liability on the Trustee or the holders and shall either provide that losses are payable notwithstanding, among other things, any act of negligence of the Company, more hazardous use or occupation of the Trust Equipment than that permitted by such policies, any breach or violation by the Company of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Trust Equipment or not contain exclusions, limitations or warranties which could impair the coverage of the Trustee under such insurance. Each such insurance policy shall expressly provide that all of the provisions thereof except the liability for premiums (which shall be solely a liability of the Company) shall be primary without right of contribution from any other insurance carried by the Trustee or any holder. The Company shall furnish to the Trustee such



evidence of compliance with this section as the Trustee shall reasonably request. In the event that the Company shall fail to maintain insurance as herein provided, the Trustee may at its option on five Business Days' prior written notice to the Company provide such insurance (giving the Company prompt written notice thereof) and, in such event, the Company shall, upon demand from time to time, reimburse the Trustee for the cost thereof together with interest on the amount of such cost from the date of payment thereof at an annual rate of 15%. If the Trustee shall receive any insurance proceeds or condemnation payments in respect of any Trust Equipment suffering a Casualty Occurrence, the Trustee shall, subject to the Company's having made any required payment in respect of such Equipment (or having conveyed to the Trustee Equipment with equivalent fair value) in accordance with Section 5.08 and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Company up to an amount equal to the amount paid by the Company pursuant to Section 5.08 (or, if no payment is then required of the Company under Section 5.08 in respect of such Equipment suffering a Casualty Occurrence, then, if the Company shall so request, pay to the Company the full amount of such proceeds or condemnation payment); any balance of such proceeds or condemnation payments not required to be paid to the Company in accordance with the foregoing shall remain the property of the Trustee subject to the applicable provisions hereof. All insurance proceeds received by the Trustee in respect of any Trust Equipment not suffering a Casualty Occurrence shall be paid to the Company upon proof satisfactory to the Trustee that any damage to such Trust Equipment in respect of which such proceeds were paid has been fully repaired, or adequate provision therefor has been made, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

## ARTICLE SIX

### REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. Events of Default. The Company covenants and agrees that in case

(a) the Company shall default in the payment of all or any part of the rental payable hereunder needed to pay the principal of any Trust Certificate as and when such principal may become due, or if the Company shall default in the payment of any other part of the rental payable hereunder (including advance rental) for more than five days after the same shall have become due and payable, or

(b) the Company and/or PACCAR, as applicable, shall fail to comply with any of the terms and covenants of Sections 2 or 10 of the Cash Flow Support Agreement (as defined in the RAILEASE Agreement) or of the Letter Agreement (as defined in the RAILEASE Agreement) or of Sections 2.02 or 3.01(c) of the RAILEASE Agreement, or

(c) the Company shall, for more than 5 days after first obtaining actual knowledge thereof, fail to comply with the terms and covenants of Sections 3.01(a), (b), (d) or (e) of the RAILEASE Agreement or of Section 7.03 of this Agreement, or to make provision satisfactory to the Trustee for such compliance; provided, that the Company shall be deemed to have obtained actual knowledge of any such failure to comply (i) with said Section 3.01(a), (b) or (e) in any event not later than 15 days after the end of any monthly accounting period of the Company and (ii) with said Section 3.01(d) in any event not later than 30 days after the end of any quarterly accounting period of the Company, or

(d) the Company shall fail to comply with any of the terms and covenants of Sections 2.01, 2.03 or 4.02 of the RAILEASE Agreement and such failure shall not have been cured, or provision for cure thereof satisfactory to the Trustee shall not have been made, within 20 days, or

(e) the Company and/or PACCAR, as applicable, shall, for more than 20 days after written demand for compliance shall have been given to the Company by the Trustee or the holders of 10% or more in unpaid amount of the Trust Certificates then outstanding, fail to comply with any other of the terms and covenants of this Agreement, the Cash Flow Support Agreement or the RAILEASE Agreement on its part to be kept and performed, or to make provision

satisfactory to the Trustee for such compliance, or

(f) the lease provided for herein shall be terminated by operation of law, or

(g) any proceedings shall be commenced by or against the Company for any relief which includes, or might result in, any modification of the obligations of the Company hereunder, under the guaranty endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the initial holders thereof, or a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and such proceedings, decree or order shall remain unstayed and in effect for a period of 60 consecutive days, or

(h) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing, or

(i) any representation, warranty or written statement of the Company, PACCAR or BRAE in the Purchase Agreement or in any document delivered hereunder, thereunder or under the RAILEASE Agreement shall prove to have been, when made, false or misleading in any material respect, or

(j) default shall be made with respect to any Indebtedness (as defined in the RAILEASE Agreement) of the Company or any Restricted Subsidiary (other than the Trust Certificates) in excess of the lesser of \$1,000,000 or 5% of all Indebtedness of the Company and its Restricted Subsidiaries on a Consolidated basis beyond any applicable period of grace, or default shall be made with respect to the performance of any other obligation incurred in connection with any such Indebtedness, if the effect of any such default is to accelerate or permit the acceleration of the maturity of any such Indebtedness, or any such Indebtedness shall not be paid when due, unless, if there is an applicable grace period, within the applicable period of grace thereunder such default shall have been remedied or cured by the Company or such Restricted Subsidiary or shall have been waived by the holder or holders of such Indebtedness in accordance with the terms thereof,

then, in any such case as long as the same shall be continuing (herein sometimes called an Event of Default) the Trustee, by notice in writing to the Company, or the holders of not less than 66 2/3% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration or rentals payable pursuant to Section 5.04(B)(4) after the date of such declaration) payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the respective rates per annum set forth in the outstanding Trust Certificates, to the extent legally enforceable, on any portion thereof overdue.

SECTION 6.02. Remedies. If an Event of Default shall have occurred and be continuing, the Trustee (a) may by its agents enter upon the premises of the Company and of any Affiliate of the Company or of any sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and

otherwise, (b) may lease the Trust Equipment or any part thereof, (c) with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, or (d) may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 5.04 (other than rentals required for the payment of interest accruing, or rentals payable pursuant to Section 5.04(B)(4)) due, after the date of the declaration referred to in Section 6.01, whether or not they shall have then matured.

SECTION 6.03. Application of Proceeds. If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Section 6.01

and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest with respect to any Trust Certificate at the rate per annum set forth in such Trust Certificate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest on each such Trust Certificate at the rate per annum set forth in such Trust Certificate to the extent legally enforceable from the last preceding Interest Payment Date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.04. Waivers of Default. Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of 66 2/3% in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default arising from nonpayment of any instalment of rental payable pursuant to Section 5.04(B)(3), (B)(4), (B)(5), (B)(6) or (B)(7), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.01 provided, but before September 30, 1995, all arrears of rent (with interest at the respective rates per annum set forth in the outstanding Trust Certificates upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental instalments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of 66 2/3% in aggregate principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. Obligations of Company Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, nor any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 6.06. Company to Deliver Trust Equipment to Trustee. In case the Trustee shall rightfully demand possession of any of the Trust Equipment, the Company will, at its own expense, forthwith and in the usual manner and at usual

speed, cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 6.07. Trustee to Give Notice of Default. The Trustee and the Company shall give to the holders of the Trust Certificates notice of each default hereunder known to the Trustee and the Company within five days after the occurrence thereof, unless such default shall have been remedied or cured before the giving of such notice.

SECTION 6.08. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and interest on such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 6.09. Remedies Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.



## ARTICLE SEVEN

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. Guaranty of Company. The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof and of this Agreement (and, if not so paid, with interest thereon until paid at the respective rates per annum contained in the guarantees set forth on the Trust Certificates to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the respective rates per annum contained in the guarantees set forth on the Trust Certificates to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President or a Vice President or other duly authorized signatory. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued, executed and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be or had then been such officer.

SECTION 7.02. Discharge of Liens. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim imposed upon the Company which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the

payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 7.03. Limitation on Liens on Equipment.

The Company will not create, issue, incur or permit to continue in existence any mortgage, pledge, encumbrance, lien or other charge of any kind upon the Trust Equipment, other than (i) the liens granted and permitted to be granted upon such Trust Equipment upon the terms and conditions of this Agreement, (ii) inchoate tax liens or liens for taxes not due or payable, and (iii) other liens arising in the ordinary course of business which were not incurred in connection with the borrowing of money or the issuance or assumption of notes, bonds, debentures or the like or specific grants of liens in contracts signed by the Company, and which do not, individually or in the aggregate, substantially detract from the value of the Trust Equipment or substantially impair the use thereof in the operation of the Company's business or significantly endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 7.04. Payment of Expenses; Recording.

The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company will, promptly after the execution and delivery of this Agreement and each supplement hereto, respectively, cause this Agreement and such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. In addition, upon request of holders of 66 2/3% in unpaid amount of the Trust Certificates, the Company shall deposit this Agreement and each such supplement with the Registrar General of Canada and make provision for publication of notice of such deposit in The Canada Gazette pursuant to Section 86 of the Railway Act of Canada or make such other filings or actions as may be advisable at the time under applicable Canadian or provincial law. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments and file, register and record this

Agreement and each supplement hereto in all other jurisdictions required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect the title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates thereunder and hereunder (to the extent possible under applicable law of the United States and any jurisdiction therein) and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary for any of such purposes.

SECTION 7.05. Further Assurances. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE EIGHT

### THE TRUSTEE

SECTION 8.01. Acceptance of Trust. The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. Duties and Responsibilities of the Trustee; During Default; Prior to Default. In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee shall not be deemed to have knowledge of any default or Event of Default under this Agreement prior to the time an officer or employee in its Corporate Trust Department shall have

obtained actual knowledge thereof.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of the requisite percentage in aggregate principal amount of the Trust Certificates at the time outstanding as provided elsewhere herein, relating to the time, method and place of conducting

any proceeding for any remedy available to the Trustee, or exercising or refraining from exercising any trust or power conferred upon the Trustee, under this Agreement; and

(d) the Trustee shall not be required to take any action under this Agreement which it has been advised by counsel is contrary to law.

None of the provisions contained in this Agreement, except the last paragraph of Section 5.04, shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

#### SECTION 8.03. Certain Rights of the Trustee.

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, trust certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

(d) the Trustee shall not be liable for any action taken by it in good faith and believed by it

to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

Except as otherwise provided in the first paragraph of Section 8.02, the Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

SECTION 8.04. Application of Rentals; Responsibility of Trustee to Insure or Record. The Trustee covenants and agrees to apply the rentals received by it under Section 5.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04.

SECTION 8.05. Funds May Be Held by Trustee; Investments in Investment Securities. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it in Investment Securities, and at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates. The Trustee may make any and all such investments through its own Bond Department unless otherwise directed by the Company.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash the proceeds of any such sale up to the amount paid for such Investment Securities, including accrued interest.

The Trustee shall restore to Deposited Cash rent received by it for that purpose under the provisions of Section 5.04(B)(1)(b).

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties by Agents; Reimbursement of Expenses; Holding of Trust Certificates; Moneys Held in Trust. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company.

The Trustee shall be entitled to receive payment for all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

Any moneys at any time held by the Trustee shall, until paid out or invested by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.07. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may at any time resign by giving 30 days' written notice of resignation to the Company and the holders of the Trust Certificates and such resignation shall take effect 30 days after the delivery thereof to the Company and the holders or upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 8.08.

(b) The holders of 66 2/3% in aggregate principal amount of the Trust Certificates at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee to be removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 9.01 of the action taken by the holders of the Trust Certificates.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of 66 2/3% of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a national bank, or a bank or trust company having capital and surplus of not less than \$100,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and of each appointment by the Company of a successor trustee pursuant to paragraph (c) of this Section by mailing



written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

SECTION 8.08. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 8.07 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.06.

SECTION 8.09. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trust, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## ARTICLE NINE

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of

any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.02. Proof of Execution of Instruments and Holding of Trust Certificates. Subject to the provisions of Section 8.02, proof of the execution of any instrument by a holder of Trust Certificate or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer, or by a guarantee of the signature of such person by a trust company, bank or a member firm of the New York Stock Exchange, Inc.

The ownership of registered Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof. The ownership of order Trust Certificates may be proved by presentment.

The Trustee may require such additional proof of any matter referred to in this Section 9.02 as it shall deem necessary.

This Section 9.02 is not intended to limit or diminish the provisions of Section 2.05 hereof.

SECTION 9.03. Trust Certificates Owned by Company Deemed Not Outstanding. In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by any Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such

direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

SECTION 9.04. Right of Revocation of Action Taken.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

SECTION 9.05. Amendment or Waiver. Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 66 2/3% of the aggregate unpaid principal amount of the Trust Certificates then outstanding; provided, however, that without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of instalments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

## ARTICLE TEN

### MISCELLANEOUS

SECTION 10.01. Rights Confined to Parties and Holders. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their respective successors and of the holders of the Trust Certificates. Nothing expressed or implied herein is intended or shall be construed to preclude the Company causing any of its obligations respecting the Trust Equipment to be performed by others on behalf of the Company, including without limitation by any Manager or Affiliate, provided that no taking of any action on behalf of the Company by others shall diminish or alter the Company's responsibilities hereunder.

SECTION 10.02. No Recourse. No recourse under any obligation, covenant or agreement of this Agreement, or of the guaranty endorsed on any Trust Certificate, shall be had against any officer or director of the Company, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the officers or directors of the Company, as such or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 10.03. Binding Upon Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE CONNECTICUT BANK AND  
TRUST COMPANY, Trustee

By

  
Authorized Officer

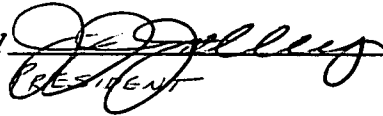
[Corporate Seal]

Attest:

  
Authorized Officer


RAILEASE Inc

By

  
PRESIDENT

[Corporate Seal]

Attest:

  
Secretary

STATE OF NEW YORK            )  
                                  : .ss:  
COUNTY OF NEW YORK        )

On this <sup>22<sup>nd</sup></sup> day of September, 1980, before me personally came M.I. Rister, to me known, who, being by me duly sworn, says that he resides at Newington, Conn., that he is an authorized officer of The Connecticut Bank and Trust Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

Susan A. Ventura  
Notary Public

[Notarial Seal]

STATE OF WASHINGTON        )  
                                  : ss:  
COUNTY OF KING            )

On this <sup>19<sup>th</sup></sup> day of September, 1980, before me personally came J.A. Tolley, to me known, who, being by me duly sworn, says that he resides at BELLEVUE, WA., that he is President of RAILEASE Inc, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Paul S. Haddad  
Notary Public

[Notarial Seal]

SCHEDULE A

Description of Trust Equipment

| <u>Quantity</u> | <u>Specification</u> | <u>Description</u>      | <u>AAR*<br/>Mechanical<br/>Designation</u> | <u>Car Numbers<br/>(all inclusive)</u> |
|-----------------|----------------------|-------------------------|--|--|
| 140**           | PACCAR Inc<br>PC-701 | 52'6" 70<br>ton boxcars | XM   | ADN 9760<br>through 9899**             |

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\* Car types for purposes of additional or substituted equipment.

\*\* Subject to change according to aggregate Cost and available Deposited Cash.